IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

MAURICE SHELTON,	:	APPEAL NO. C-080608 TRIAL NO. A-0700339
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY.*
RONALD SCHULTZ	:	
and	:	
YVONNE GUTAPFEL,	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

On July 12, 2006, defendant-appellee Cincinnati Police Officer Ronald Schultz stopped plaintiff-appellant Maurice Shelton and arrested him because of an outstanding felony warrant. Following his arrest, Shelton's car was towed because it was illegally blocking a parking lot and the passenger in the vehicle did not have a valid driver's license. A few weeks later, Officer Schultz and his partner, defendant-appellee Yvonne Gutapfel, stopped Shelton's vehicle and cited Shelton for improper change of course and excessive window tinting. The trial court found Shelton guilty of both offenses following a bench trial.

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Shelton subsequently filed a pro se complaint against Officers Schultz and Gutapfel under Section 1983, Title 42, U.S.Code. He alleged that Officer Schultz had violated the Fourth Amendment by improperly impounding his vehicle and that Officers Schultz and Gutapfel had conspired to violate his constitutional rights by charging him with two traffic offenses. The trial court granted summary judgment to Officers Schultz and Gutapfel on qualified-immunity grounds. Shelton now appeals.

He raises three interrelated assignments of error in which he argues that the trial court erred in granting summary judgment to Officer Schultz on his Fourth Amendment claim. Because Shelton has not challenged the trial court's grant of summary judgment to Officers Schultz and Guptafel on his conspiracy claim, we do not address that portion of the court's judgment on appeal.[2]

Summary judgment is appropriate when "(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party."[3] We review a trial court's decision to grant a motion for summary judgment de novo.[4]

In this case, Officer Schultz was entitled to qualified immunity, if a reasonable officer could have believed that the seizure of Shelton's car was lawful in light of clearly established law and the information Officer Schultz possessed.[5] Shelton,

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[2] *State v. Perez*, 1st Dist. Nos. C-0040363, C-040364 and C-040365, 2005-Ohio-1326, at ¶21-23.
[3] *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.
[4] *Koos v. Central Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 641 N.E.2d 265.
[5] *Hunter v. Bryant* (1991), 502 U.S. 224, 227, 112 S.Ct. 534.

however, bore the ultimate burden of proof to show that Officer Schultz was not entitled to qualified immunity.

Shelton claims that the impoundment of his car by Officer Schultz was not authorized by state or local law, and therefore, that it violated the Fourth Amendment. He first argues that R.C. 4513.61 applies only to the impoundment of abandoned vehicles. But the plain language of the statute demonstrates otherwise. R.C. 4513.61 provides that law enforcement "may order into storage **any** motor vehicle, including an abandoned junk motor vehicle * * * that has been left on the public right of way for more than forty-eight hours; but when such a motor vehicle constitutes an obstruction to traffic it may be ordered into storage immediately (emphasis added)."

Shelton next argues that Officer Schultz violated Cincinnati Municipal Code 513-1 and the policy of the Cincinnati Police Department. Cincinnati Municipal Code 513-1 provides that "[a]ny police officer may impound and cause to be towed any motor vehicle: (2) [w]hich is parked in violation of the law; or (7) which is parked so as to block ingress or egress to a street, alley, roadway, driveway, parking facility or loading facility, or (8) [w]hich is in the possession of a physically arrested person."

The ordinance clearly refers to three specific situations, any one of which was sufficient to impound Shelton's vehicle in this case. Because the uncontroverted evidence was that Shelton had been physically arrested and taken into custody; that the passenger in his vehicle did not have a valid driver's license; and that Shelton's vehicle was blocking a driveway and was therefore parked illegally at the time of his arrest, Officer Schultz's impoundment of the vehicle was reasonable under the circumstances.

Shelton, nonetheless, argues that his brother should have been permitted to take possession of the car in lieu of impoundment. But the United States Supreme Court has held that law enforcement officials are not required to give arrestees the opportunity to make other arrangements for their vehicles when deciding whether impoundment is appropriate.[6] Moreover, the fact that Schultz's actions may have violated the Cincinnati Police Department's policy with respect to the impoundment of Shelton's vehicle was of no consequence to his Section 1983 claim.[7] Because Shelton did not clearly establish that Officer Schultz's conduct was unconstitutional or unreasonable at the time Schultz seized his vehicle, Officer Schultz was entitled to qualified immunity. We, therefore, overrule Shelton's assignments of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and **SUNDERMANN, JJ.**

To the Clerk:

Enter upon the Journal of the Court on March 18, 2009

per order of the Court _____.

Presiding Judge

[6] *Colorado v. Bertine* (1987), 479 U.S. 367, 373-374, 107 S.Ct. 738; see, also, *Blue Ash v. Kavanaugh*, 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, at ¶16.

[7] *Smith v. Freland* (C.A.6 1992), 954 F.2d 343, 347-48 (holding that "[u]nder §1983, the issue is whether [an] [o]fficer [has] violated the Constitution, not whether he should be disciplined by the local police force").